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In The

Supreme Court of the United States

October Term, 1980

COMMUNITY COMMUNICATIONS COMPANY, INC.,
Petitioner,

vs.

CITY OF BOULDER, COLORADO, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

AMICUS CURIAE BRIEF FOR THE COLORADO MUNICIPAL LEAGUE IN SUPPORT OF THE RESPONDENTS

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QUESTION PRESENTED

Is the City of Boulder's action, restricting petitioner's use of City rights-of-way, immune from attack under the federal antitrust laws?

TABLE OF CONTENTS

Pages

Question Presented i

Table of Contents ii

Table of Authorities iv

Interest of *Amicus Curiae* 1

Statement of the Case 2

Summary of the Argument 2

Argument: The City of Boulder's action, restricting petitioner's use of City rights-of-way, is immune from federal antitrust attack. 3

I. The requirements necessary to establish the City's antitrust immunity depend in part on the source and scope of its power to act. 4

II. Boulder's action was taken pursuant to its constitutional home rule powers and meets the requirements for immunity set forth in *Midcal, Bates,* and *New Motor Vehicle Board.* 6

A. Boulder is the ultimate body wielding the state's power over Boulder's local and municipal matters. 7

B. Boulder establishes "state" policy in its own local and municipal matters. 11

C. Regulating the use of public rights-of-way is a local and municipal matter under Article XX. 16

D. The City's policy of restricting the use of public rights-of-way is clearly articulated and

TABLE OF CONTENTS—Continued

Pages

affirmatively expressed, and is actively supervised by the City. 19

E. Recognition of Colorado's municipal home rule powers does not confer automatic immunity upon any municipality. 19

III. If Boulder's action was taken pursuant to its statutory powers, the action is immune pursuant to principles set forth in *Lafayette* and *Midcal*. .. 20

A. Boulder's action was taken pursuant to a state policy to displace competition with regulation in the use of public rights-of-way. 20

(1) The state's policy is evidenced through its police power delegations to the City to regulate and prevent certain uses of the public rights-of-way. 21

(2) Police power delegations sufficiently express state policy to displace competition with regulation. 25

B. The state's policy is clearly articulated and affirmatively expressed, and is actively supervised by the state directly and through its municipal agents. 28

Conclusion 29

Appendices ——

Appendix A: Colo. Const. Art. XX, as amended through 1981 ..... App. 1

TABLE OF CONTENTS—Continued

Pages

Appendix B: Colo. Const. Art. XX, as originally adopted in 1902 ..... App. 16

Appendix C: Colo. Const. Art. V, Sec. 1 ..... App. 26

Appendix D: Amended General Laws of Colorado, 1877 ..... App. 30

Appendix E: C. R. S. 1973, § 31-12-101 ..... App. 32

Appendix F: Colo. Const. Art. XXV ..... App. 34

Appendix G: C. R. S. 1973, § 43-2-124 and § 43-2-135 ..... App. 35

TABLE OF AUTHORITIES

CASES:

Bates v. State Bar of Arizona, 433 U. S. 350 (1977) 4, 5, 6, 7, 11, 12, 15

Berman v. City and County of Denver, 120 Colo. 218, 209 P. 2d 754 (1949) 17

California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 445 U. S. 97 (1980) 3, 4, 5, 6, 11, 14, 20, 29

Cantor v. Detroit Edison Co., 428 U. S. 579 (1976) 4, 6

City and County of Denver v. Hallett, 34 Colo. 393, 83 P. 1066 (1905) 17

City and County of Denver v. Henry, 95 Colo. 582, 38 P. 2d 895 (1934) 10, 18

TABLE OF AUTHORITIES—Continued

Pages

City and County of Denver v. Stenger, 295 F. 809 (8th Cir. 1924) 13, 14, 17, 18, 25

City and County of Denver v. Sweet, 138 Colo. 41, 329 P. 2d 441 (1958) 15, 16

City and County of Denver v. Tihen, 77 Colo. 212, 235 P. 777 (1925) 15

City of Aurora v. Bogue, 176 Colo. 198, 489 P. 2d 1295 (1971) 9

City of Lafayette v. Louisiana Power & Light Co., 435 U. S. 389 (1978) 4, 5, 20, 21, 25, 28, 29

City of Lakewood v. Haase, 198 Colo. 47, 596 P. 2d 392 (1979) 24

City of Sheridan v. City of Englewood, — Colo. —, 609 P. 2d 108 (1980) 9

Colorado Project—Common Cause v. Anderson, 178 Colo. 1, 495 P. 2d 220 (1972) 13

Community Communications Co. v. City of Boulder, 630 F. 2d 704 (10th Cir. 1980), *cert. granted,* April 6, 1981 ..... 3, 18, 19

Davis v. City and County of Denver, 140 Colo. 30, 342 P. 2d 674 (1959) 15

Deluxe Theatres, Inc. v. City of Englewood, 198 Colo. 85, 596 P. 2d 771 (1979) 9

Denver Urban Renewal Authority v. Byrne, — Colo. —, 618 P. 2d 1374 (1980) 10

Elder v. Sours, 31 Colo. 369, 74 P. 167 (1903) 7

TABLE OF AUTHORITIES—Continued

Pages

Fishel v. City and County of Denver, 106 Colo. 576, 108 P. 2d 236 (1940) 6

Four County Metropolitan District v. Board of County Commissioners, 149 Colo. 284, 369 P. 2d 67 (1962) 10

Goldfarb v. Virginia State Bar, 421 U. S. 773 (1975) 4, 6

Hamilton v. City and County of Denver, 176 Colo. 6, 490 P. 2d 1289 (1971) 18

Hoper v. City and County of Denver, 173 Colo. 390, 479 P. 2d 967 (1971) 8

In re: The Mountain States Telephone and Telegraph Co., PUC Decision No. 70749 17

Johnson v. McDonald, 97 Colo. 324, 49 P. 2d 1017 (1935) 13

Lehman v. Denver, 144 Colo. 109, 355 P. 2d 309 (1960) 10

Lewis v. Lorenz, 144 Colo. 23, 354 P. 2d 1008 (1960) 24

McCormick v. City of Montrose, 105 Colo. 493, 99 P. 2d 969 (1940) 18

McNichols v. City and County of Denver, 101 Colo. 316, 74 P. 2d 99 (1937) 10, 17

New Motor Vehicle Board v. Orrin W. Fox Co., 439 U. S. 96 (1978) 4, 5, 6

TABLE OF AUTHORITIES—Continued

Pages

Packard v. Banton, 264 U. S. 140 (1924) 25

Parker v. Brown, 317 U. S. 341 (1943) 3, 4, 5, 6, 11, 12, 14, 15, 20

People v. Hizhniak, 195 Colo. 427, 579 P. 2d 1131 (1978) 18

Pickett v. City of Boulder, 144 Colo. 387, 356 P. 2d 489 (1960) 18

Pueblo v. Flanders, 122 Colo. 571, 225 P. 2d 832 (1950) 6

Robinson v. City of Boulder, 190 Colo. 357, 547 P. 2d 228 (1976) 6

Roosevelt v. City of Englewood, 176 Colo. 576, 492 P. 2d 65 (1971) 10

Security Life and Accident Co. v. Temple, 177 Colo. 14, 492 P. 2d 63 (1972) 10

State Farm Insurance Co. v. Temple, 176 Colo. 537, 491 P. 2d 1371 (1971) 10, 15

State of Texas v. White, 74 U. S. 700 (1868) 12

Svaldi v. City of Lakewood, 36 Colo. App. 155, 536 P. 2d 331 (1975) 9

Tate v. Prevost, 55 Colo. 199, 134 P. 129 (1913) 8

Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 575 P. 2d 382 (1978) 6, 10, 14

Woolverton v. City and County of Denver, 146 Colo. 247, 361 P. 2d 982 (1961) 21

TABLE OF AUTHORITIES—Continued

Pages

CONSTITUTIONAL PROVISIONS:

Colorado Constitution

Art. II, sec. 1 13

Art. II, sec. 2 ..... 13, 14

Art. IV, sec. 2 14

Art. V, sec. 1 ..... 14, App. 26

Art. VI, sec. 1 14

Art. XX, sec. 1 ..... 4, 16, App. 1, App. 16

Art. XX, sec. 2 ..... App. 3, App. 18

Art. XX, sec. 3 ..... App. 3, App. 18

Art. XX, sec. 4 ..... 16, 23, App. 4, App. 19

Art. XX, sec. 5 ..... App. 7, App. 22

Art. XX, sec. 6 ..... 8, 14, 16, App. 9, App. 24

Art. XX, sec. 7 ..... App. 13, App. 24

Art. XX, Sec. 8 ..... App. 14, App. 26

Art. XX, sec. 9 ..... App. 14

Art. XXV ..... 17, 23, 24, App. 34

Arizona Constitution

Art. III 15

Art. VI 15

TABLE OF AUTHORITIES—Continued

Pages

STATUTES:

Sherman Anti-trust Act, 15 U. S. C. § 1, § 2 (1976) 4

Colorado Revised Statutes, 1973

§§ 13-51-105—13-51-115 28

§ 31-1-101 (6) (1977 Repl. Vol.) 21

§§ 31-12-101 (20) (a), (b) and (f) ..... 23, App. 32

§ 31-15-101 (2) (1977 Repl. Vol.) 24, 27

§§ 31-15-501 (1) (c) (1977 Repl. Vol.) 23

§ 31-15-702 (1977 Repl. Vol.) 21, 22, 23

§ 31-16-101 (1977 Repl. Vol.) 28

§§ 31-23-201—31-23-226 (1977 Repl. Vol.) 27

§§ 31-23-301—31-23-313 (1977 Repl. Vol.) 27

§§ 31-32-101—31-32-105 (1977 Repl. Vol.) 23

§ 43-2-124 ..... 24, App. 35

§ 43-2-135 ..... 24, App. 35

1923 Colo. Sess. Laws 649-655 27

1929 Colo. Sess. Laws 219-241 27

ORDINANCES:

Boulder, Colo., Ordinance 4472 (Dec. 18, 1979) 3

Boulder, Colo., Ordinance 4473 (Dec. 18, 1979) 3

TABLE OF AUTHORITIES—Continued

Pages

OTHER AUTHORITIES:

Colo. R. Civ. P. 57 28

1 J. F. Dillon, *Municipal Corporations* § 237 (5th ed. 1911) 9

Klemme, *The Powers of Home Rule Cities in Colorado*, 36 U. Colo. L. Rev. 321 (1964) 7, 15, 21

1 C. D. Sands, *Sutherland Statutory Construction* § 4.07 (4th ed. 1972) 27

INTEREST OF THE COLORADO MUNICIPAL LEAGUE

The Colorado Municipal League ("League") is a statewide nonprofit association of two hundred thirty-one Colorado cities and towns, including all fifty-six of the home rule municipalities in Colorado. The League is an *amicus curiae* by consent of the parties (signed consent of the parties are on file with the Clerk of this Court), and was an *amicus curiae* during the consideration of this case by the Tenth Circuit Court of Appeals.

Two issues of particular concern to Colorado's municipalities are raised in this lawsuit: will Colorado municipalities be subjected to the significant cost of defending federal antitrust claims and the potentially crippling cost of treble damage judgments for exercising their traditional regulatory powers; and will the constitutional protection from interference by the state legislature, long afforded Colorado's home rule municipalities, be substantially eroded? Related to these two issues is a concern that the threat of antitrust liability or simply fear of the cost of antitrust litigation, could have a chilling effect on the exercise of regulatory authority otherwise necessary to protect the public health, safety and welfare.

Much is made of the fact that the Boulder ordinances at issue involve regulation of a cable television business, and that the Colorado statutes and Constitution do not refer specifically to "cable television." More fundamentally, however, this case involves municipal regulation of the use of public rights-of-way, and particularly the regulation of special uses made of public rights-of-way by private enterprise. During a telephone survey conducted by the League staff in the fall of 1980, some eighty-five Colorado municipalities responded that they had entered into a franchise, license, permit, or other agreement with a cable

television company regarding use of municipal rights-of-way. Ordinances in the League's files indicate that some of these agreements date back to the early 1960's. But cable television companies are not the only businesses seeking special use of public rights-of-way, and it is safe to say that even larger numbers of Colorado municipalities have entered into a franchise, permit, license or other agreement to permit special use of public rights-of-way by other types of businesses, such as electric and gas utilities. The potential impact of any decision in this case could broadly affect municipal regulation of any special use of public rights-of-way, regardless of the specific nature of the business involved.

The League appears as *amicus curiae* in this case to urge this Court to affirm the Tenth Circuit Court of Appeals' decision. The League's brief will focus on Colorado law and the application to Colorado law and to Colorado's municipalities of past opinions of the United States Supreme Court relating to state action antitrust immunity.

STATEMENT OF THE CASE

The League adopts the statement of the case appearing in the brief of the City of Boulder.

SUMMARY OF THE ARGUMENT

The Tenth Circuit's decision should be affirmed. In restricting petitioner's use of City rights-of-way, Boulder exercised either its constitutional home rule powers over local and municipal matters or the statutory powers delegated to it by the Colorado General Assembly. In either event, the City's action met the applicable requirements for state action immunity and is immune from attack under the federal antitrust laws.

ARGUMENT

The City of Boulder's action, restricting petitioner's use of City rights-of-way, is immune from federal antitrust attack.

The Tenth Circuit Court of Appeals ruled in *Community Communications Co. v. City of Boulder,* 630 F. 2d 704, 708 (10th Cir. 1980), *cert. granted,* April 6, 1981, that the City of Boulder's ("City" or "Boulder") action, restricting petitioner's use of the City's rights-of-way for cable television ("CATV") expansion[1] is exempt[2] from the federal antitrust laws. The Tenth Circuit found that the City's action was within the constitutional home rule powers granted it in "local and municipal matters," and met the requirement for state action immunity as set forth in *Parker v. Brown,* 317 U. S. 341 (1943) and most recently in *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.,* 445 U. S. 97 (1980). Consequently, the Tenth Circuit reversed the judgment of the trial court, setting aside a temporary restraining order which the trial court issued against the City based on its alleged antitrust violations.

The Tenth Circuit's decision should be affirmed. The City's action was an exercise of its home rule powers or

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[1]Section 3 of the Boulder, Colo., Ordinance No. 4472 (Dec. 18, 1979) and section 1 of Boulder, Colo., Ordinance No. 4473 (Dec. 18, 1979) specifically restrict petitioner from expanding its system *through working in the public rights-of-way* outside certain geographic areas. The key restriction in each ordinance is petitioner's use of the public rights-of-way. (Copies of the Boulder ordinances appear in the appendix to petitioner's application for certiorari, at A-55 through A-65.)

[2]The League will use the term "immunity" instead of "exemption." While somewhat inexact, the term "immunity" is used for convenience, to denote the circumstances under which the federal antitrust laws are not applicable to states and their subdivisions.

its statutory powers.[3] In either event, the action met the applicable requirements for state action immunity.

I. The requirements necessary to establish the City's antitrust immunity depend in part on the source and scope of its power to act.

According to *Parker v. Brown*, 317 U. S. at 350, 351, the Sherman Antitrust Act (15 U. S. C. §§ 1, 2) was intended to prohibit certain anticompetitive acts of private individuals. It was not intended to prohibit restraints imposed by the state as an act of government. *Id.* at 352. Decisions of this Court subsequent to *Parker* set forth principles to apply in deciding whether the action for which immunity is claimed represents a restraint imposed by the state as an act of government, or a private restraint seeking the cloak of state action immunity. *See California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., supra; New Motor Vehicle Board v. Orrin W. Fox Co.*, 439 U. S. 96 (1978); *City of Lafayette v. Louisiana Power & Light Co.*, 435 U. S. 389 (1978); *Bates v. State Bar of Arizona*, 433 U. S. 350 (1977); *Cantor v. Detroit Edison Co.*, 428 U. S. 579 (1976); and *Goldfarb v. Virginia State Bar*, 421 U. S. 773 (1975). The most stringent requirements are imposed upon private individuals, farthest removed from the ultimate body wielding the state's authority in the particular area at issue. Lesser requirements are imposed upon the ultimate body wielding the state's authority in that area. Those requirements may be briefly summarized as follows:

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[3]The League was an *amicus curiae* during the Tenth Circuit Court of Appeals' consideration of this case. The League argued then, as it does here, that the City of Boulder's action is entitled to antitrust immunity whether it was taken pursuant to the City's home rule powers or its statutory powers. The Tenth Circuit did not need to decide the statutory argument after finding that the City was acting pursuant to its constitutional home rule powers.

Where the action for which immunity is claimed is taken by the ultimate body wielding the state's power in the area, the challenged anticompetitive restraint must reflect a clearly articulated and affirmatively expressed policy of that body to displace competition with regulation or monopoly service; and, that body must actively supervise the policy. *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U. S. at 105. *See Bates v. State Bar of Arizona, supra; New Motor Vehicle Board v. Orrin W. Fox Co., supra;* and *Parker v. Brown, supra.*

Where the action for which immunity is claimed is taken by a traditional governmental body exercising powers delegated to it directly by the ultimate body wielding the state's power in the area, the requirements set forth above must be met. However, the policy which must be clearly expressed and actively supervised is that of the ultimate body wielding the state's power in the area, not that of a governmental body exercising the delegated power. *City of Lafayette v. Louisiana Power & Light Co.*, 435 U. S. at 410; and *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U. S. at 105. The necessary policy can be found if, from the authority delegated to operate in a particular area, it is apparent that the ultimate body wielding the state's power contemplated the kind of action complained of. *City of Lafayette v. Louisiana Power & Light Co.*, 435 U. S. at 415.

Where the action for which immunity is claimed is taken by a private individual or by a governmental body exercising only limited governmental functions and having few of the attributes of a governmental entity, the anticompetitive action must be commanded or compelled, not merely contemplated, by the ultimate body wielding

the state's authority in the area. *Cantor v. Detroit Edison Co.*, 428 U. S. at 592-593; and *Goldfarb v. Virginia State Bar*, 421 U. S. at 790-791.

As these principles indicate, the farther removed the person or entity imposing the restraint is from the ultimate body wielding the state's power in the area, the clearer must be that person's or entity's authority to engage in anticompetitive activity. This is consistent with the purpose of the state action immunity: to protect the ability of the state to impose restraints as an act of government. *Parker v. Brown*, 317 U. S. at 350-352.

II. Boulder's action was taken pursuant to its constitutional home rule powers and meets the requirements for immunity set forth in Midcal, Bates, and New Motor Vehicle Board.

By Article XX[4] of the Colorado Constitution, the people of Colorado established Colorado's home rule municipalities as the ultimate bodies wielding the state's power over "local and municipal matters."[5] The citizens of Boulder adopted a home rule charter in 1917, pursuant to Article XX, and the City thereby became the ultimate

[4]See Appendix A of this brief for a copy of the relevant portions of Colorado Constitution, Article XX, as amended through 1981.

[5]Colorado's home rule municipalities do not have broad extraterritorial police powers. They may provide certain services and exercise certain powers beyond their boundaries where authorized by constitution or statute. *See, e. g., Thornton v. Farmers Reservoir & Irrigation Co.*, 194 Colo. 526, 526, 575 P. 2d 382 (1978) (outside city water service); *Fishel v. City and County of Denver*, 106 Colo. 576, 108 P. 2d 236 (1940) (condemnation of property outside boundaries). However, they have no additional police power jurisdiction beyond their boundaries by virtue of their home rule status and must instead rely on any statutory authority. *Robinson v. City of Boulder*, 190 Colo. 357, 362, 547 P. 2d 228, 231 (1976). See *Pueblo v. Flanders*, 122 Colo. 571, 575, 225 P. 2d 832, 834 (1950) (Pueblo is a home rule municipality).

body wielding the state's power over Boulder's local and municipal matters. Since Boulder's action at issue here, restricting petitioner's use of public rights-of-way in Boulder, is a "local and municipal matter" under Article XX, immunity for its action is tested by the first set of requirements described above which are applicable to the ultimate body wielding the state's power in the matter. *See*, in particular, *Bates v. State Bar of Arizona, supra.* Consequently, Boulder's action is immune from antitrust attack if the action reflects a clearly articulated and affirmatively expressed policy of the City to displace competition with regulation, and if the City actively supervises the policy.

A. Boulder is the ultimate body wielding the state's power over Boulder's local and municipal matters.

With the adoption of Colorado Constitution, Article XX, the people of Colorado carved out an exception to the state legislature's control over Colorado municipalities, declaring that the ultimate state authority over "local and municipal matters" in a home rule municipality is that municipality.

Article XX was approved by the people of Colorado and added to the state constitution in 1902.[6] In addition to forming a consolidated city and county of Denver, its purpose was to relieve "municipalities from their dependence on legislative action for their form of organization and power and from the resultant interference in municipal affairs such dependence made possible." Klemme, *The Powers of Home Rule Cities in Colorado*, 36 U. Colo. L. Rev. 321, 324-325 (1964). *See Elder v. Sours*, 31 Colo. 369, 74 P. 167 (1903).

[6]See Appendix B of this brief for a copy of Article XX as originally adopted by the people of Colorado in 1902.

As originally drafted, Article XX granted several enumerated powers to home rule cities. See Appendix B. During the years following 1902, however, controversy arose over the narrow construction Colorado's courts gave to Article XX home rule powers. *Hoper v. City and County of Denver*, 173 Colo. 390, 479 P. 2d 967, 970 (1971). The controversy culminated in 1912 when the people of Colorado, disappointed by the courts' narrowing of Article XX home rule powers, initiated by petition and approved at a state-wide election, a constitutional amendment revising and expanding section 6 of Article XX.[7] *Id. See Tate v. Prevost*, 55 Colo. 199, 134 P. 129 (1913).

The 1912 amendment to section 6 of Article XX expanded the powers granted to home rule municipalities, and increased the protection afforded home rule municipalities from interference by the state legislature in local and municipal matters. Specifically, as initiated and adopted by the people of Colorado, section 6 states:

> The people of each city or town of this State, having a population of two thousand inhabitants . . . are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters.
>
> Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the State in conflict therewith.

After identifying a non-exclusive[8] list of matters specifically deemed to be "local and municipal matters," section 6 continues:

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[7]Appendix A of this brief contains section 6 as it was initiated and adopted by the people of Colorado in 1912.

[8]*See Tate v. Prevost*, 55 Colo. at 215, 134 P. at 134; and *Hoper v. City and County of Denver*, 173 Colo. at 396, 479 P. 2d at 970.

> It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny to such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.
>
> The statutes of the state of Colorado so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

Article XX's radical reallocation of power between the state legislature and home rule municipalities cannot be overstated. Prior to Article XX, Colorado's municipalities had only those powers granted to them by the state legislature, and the legislature had complete control over their organization and existence (so-called "Dillon's Rule"). 1 J. F. Dillon, *Municipal Corporations* § 237 (5th ed. 1911). That relationship remains essentially the same today between Colorado's statutory (non-home rule) municipalities and the state legislature. Under established Colorado law, statutory municipalities "are created by statute, and are confined to the specific powers granted by statute, which must be strictly construed." *Svaldi v. City of Lakewood*, 36 Colo. App. 155, 156, 536 P. 2d 331, 332 (1975) (Lakewood is a statutory city). *Accord, City of Aurora v. Bogue*, 176 Colo. 198, 200, 489 P. 2d 1295, 1296 (1971) (Aurora was a statutory city when this case was brought); and *City of Sheridan v. City of Englewood*, — Colo. —, 609 P. 2d 108 (1980).[9]

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[9]This case graphically illustrates the difference in powers between Colorado's statutory and home rule cities. Sheridan, a statutory city, was found to have no power to levy an amusement tax. However, in the earlier case of *Deluxe Theatres, Inc. v. City of Englewood*, 198 Colo. 85, 596 P. 2d 771 (1979), home rule cities were found to have the power to levy an amusement tax as a "local and municipal matter" under Article XX of the Colorado Constitution.

Particularly since the 1912 amendment, Colorado courts have broadly interpreted and applied the powers granted to home rule municipalities by Article XX, in accordance with the people's intent. Article XX has consistently been interpreted as a grant to home rule municipalities "of *every power* theretofore possessed by the legislature to authorize municipalities to function in local and municipal affairs." *Denver Urban Renewal Authority v. Byrne*, — Colo. —, 618 P. 2d 1374, 1381 (1980), quoting from *Four County Metropolitan District v. Board of County Commissioners*, 149 Colo. 284, 294, 369 P. 2d 67, 72 (1962) (emphasis by the Court); *Lehman v. Denver*, 144 Colo. 109, 355 P. 2d 309 (1960); and *City and County of Denver v. Henry*, 95 Colo. 582, 38 P. 2d 895 (1934). That power is "plenary" in local and municipal matters. *Denver Urban Renewal Authority v. Byrne*, 618 P. 2d at 1380; and *McNichols v. City and County of Denver*, 101 Colo. 316, 323, 74 P. 2d 99, 103 (1937).

Since the 1912 amendment to Article XX, Colorado courts also have consistently applied the Article's requirement that charters or ordinances of home rule municipalities supersede conflicting state statutes. *See, e. g., Security Life and Accident Co. v. Temple*, 177 Colo. 14, 492 P. 2d 63 (1972) (sales and use tax); *State Farm Insurance Co. v. Temple*, 176 Colo. 537, 491 P. 2d 1371 (1971) (occupation tax); *Roosevelt v. City of Englewood*, 176 Colo. 576, 492 P. 2d 65 (1971) (zoning); *Thornton v. Farmers Reservoir & Irrigation Co., supra* note 5 (water condemnation); and *City and County of Denver v. Henry, supra* (traffic regulation).

The language of Article XX and its application by the Colorado courts establish beyond doubt that Colorado's home rule municipalities are the ultimate bodies wielding the state's power in local and municipal matters. What-

ever powers the state General Assembly could have granted to municipalities prior to the adoption of Article XX are granted to those municipalities by that Article. The powers of the state General Assembly in local and municipal matters are subordinated by Article XX to the powers of the state's home rule municipalities.

B. Boulder establishes "state" policy in its own local and municipal matters.

Petitioner and the *amici curiae* state attorneys general argue that Colorado's home rule municipalities are not "separate, sovereign states," that no "state" policy exists in Colorado relative to CATV, and that Boulder cannot establish any "state" policy in connection with CATV regulation. Petitioner's brief at 24 and brief of *amici curiae* at 25. They imply that only the state legislature can express state policy. Their arguments miss the mark, however, reflecting a misunderstanding of the purpose of the *Parker* state action immunity. That purpose is *not* to protect particular machinery of state government from federal intrusion. Rather, it is to protect the *sovereign powers* of the state from such intrusion. *Parker v. Brown,* 317 U. S. at 350-351; and *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.,* 445 U. S. at 104. That purpose cannot be achieved by protecting actions of or policies established by a state legislature only, since some sovereign powers of Colorado are vested in bodies other than just the state legislature. Protection must be afforded actions and policies of that government body in which the sovereign powers of the state are vested, whatever the nature of that body and wherever it may be located in the general governmental structure.

Particularly applicable is *Bates v. State Bar of Arizona, supra.* There the appellant attorneys argued that

an Arizona Supreme Court rule banning attorney advertising violated the Sherman Act. This Court held, however, that the Sherman Act claim was barred by the *Parker* state action immunity. The Court's ruling was founded on its determination that the challenged restraint (ban on attorney advertising) was the affirmative command of the Arizona Supreme Court; that the Arizona Supreme Court was the "ultimate body" wielding the state's sovereign power over the practice of law pursuant to a broad constitutional grant of authority; thus, the restraint was pursuant to "state" policy and directed by the state acting as sovereign.[10] Just as the people of Arizona delegated to the Arizona Supreme Court, through the Arizona Constitution, the sovereign power of the state over the practice of law, the people of Colorado delegated to home rule municipalities, through Article XX of the Colorado Constitution, the sovereign power of the state over local and municipal matters.

The *people* of Colorado are the source of the sovereign power of this state,[11] just as the *people* of Arizona

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[10]In response to petitioner's argument that Boulder is not a "separate, sovereign state," the Arizona Supreme Court certainly is not a "separate, sovereign state" yet it exercises sovereign power granted directly to it by the people of the state. In *Bates*, the Arizona Supreme Court was referred to as the "state" because it exercised the sovereign powers of the state. (The Arizona court rules "reflect a clear articulation of the State's policy . . ." and, through the Court's enforcement proceedings, "the State supervision is . . . active.") 433 U. S. at 362. Similarly, Boulder exercises sovereign powers of the state when acting in "local and municipal matters" under Article XX.

[11]In *State of Texas v. White*, 74 U. S. 700, 720 (1868), the Supreme Court struggled with the definition of "state" and rejected a narrow construction:

> It describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting temporarily or permanently the same country;

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are the source of the state sovereignty granted to the Arizona Supreme Court in *Bates*. Article II of the Colorado Constitution contains the state's "bill of rights." The first two sections of that article establish the people of this state, not the state legislature, as the source of state sovereign powers:

> *Section 1. Vestment of political powers.* All political power is vested in and derived from the people; all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.
>
> *Section 2. People may alter or abolish form of government-proviso.* The people of this state have the sole and exclusive right of governing themselves, as a free sovereign and independent state; and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided, such change be not repugnant to the constitution of the United States.

See *Colorado Project—Common Cause v. Anderson*, 178 Colo. 1, 495 P. 2d 220 (1972); and *Johnson v. McDonald*, 97 Colo. 324, 332, 49 P. 2d 1017, 1022 (1935).

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> often it denotes only the country or territorial region, inhabited by such a community; not unfrequently it is applied to the government under which the people live; at other times it represents the combined idea of people, territory, and government.
>
> *It is not difficult to see that in all of these senses the primary conception is that of a people or community. The people, in whatever territory dwelling, either temporarily or permanently, and whether organized under a regular government, or united by looser and less definite relations, constitute the state.* (Emphasis added.)

The Court noted that the United States Constitution used the word "state" in each of the different senses, and in some clauses made a plain distinction between a "state" and "the government of a State." *Id.* at 721. *See also, City and County of Denver v. Stenger*, 295 F. 809, 816 (8th Cir. 1924) ("state" means "all of the people.")

The people of Colorado, through the state constitution, vested portions of their sovereign power in several different entities. The executive power was vested in the governor by the Colorado Constitution, Article IV, section 2. The judicial power was vested in the courts by the Colorado Constitution, Article VI, section 1. The legislative power was vested in the state's General Assembly by the Colorado Constitution, Article V, section 1, but the people specifically reserved from that legislative power, the power to "propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly. . . ."

Through Article XX of the Colorado Constitution, the home rule amendment, the people exercised the powers they reserved in Article V, section 1[12] and Article II, section 2 and vested their ultimate power over "local and municipal matters" in home rule municipalities. Thus, home rule municipalities exercise the sovereign power of the people of the state and establish "state" policy when acting in local and municipal matters. *See City of Thornton v. Farmers Reservoir and Irrigation Company,* 194 Colo. at 534, 575 P. 2d at 388 (a portion of the state's "sovereignty" was granted directly by the people of Colorado to the citizens of home rule municipalities through the adoption of sections 1 and 6 of Article XX of the Colorado Constitution); and *City and County of Denver v. Stenger,* 295 F. at 815 (Denver exercises the delegated sovereignty of the state in local matters).

In *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.,* 445 U. S. at 103-104, the Court recognized that the *Parker* antitrust exemption "is ground-

[12]See Appendix C of this brief for a copy of Colorado Constitution, Article V, section 1.

ed in our federal structure" and, quoting from *Parker*, the Court said:

> "In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress. . . ." In *Parker v. Brown*, this Court found in the Sherman Act no purpose to nullify state powers.

To hold, as petitioner suggests, that the people's constitutional grant of sovereign powers to home rule municipalities is too broad[13] to provide a basis for any state action immunity would nullify the intent of the people of the state, long-expressed through Article XX, to free home rule municipalities from the control of the state legislature in local and municipal matters (since only the state legislature would be left to declare any state policy for home rule municipalities).[14] On the other hand, application of

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[13]The authority granted home rule municipalities by Article XX of the Colorado Constitution is no more broad than that granted in the Arizona Constitution to the Arizona Supreme Court, as reflected in *Bates v. State Bar of Arizona, supra*. Certainly, there is no specific or even general reference in the Arizona Constitution, Articles III or VI, authorizing the Arizona Supreme Court to ban attorney advertising or "restrict competition" in the practice of law.

[14]Petitioner cites *City and County of Denver v. Tihen*, 77 Colo. 212, 235 P. 777 (1925) and *City and County of Denver v. Sweet*, 138 Colo. 41, 329 P. 2d 441 (1958), for the proposition that the state legislature establishes state policy in Colorado, even as to local and municipal matters. *See*, petitioner's brief at 25, 27. The *Tihen* decision, which has been soundly criticized (see Klemme, 36 U. Colo. L. Rev. at 332), has since been overruled in part (*State Farm Insurance Co. v. Temple, supra*), and limited to situations "outside and beyond Article XX" powers. *Davis v. City and County of Denver*, 140 Colo. 30, 35, 342 P. 2d 674, 676 (1959). It now stands only for the proposition that the state legislature is the ultimate authority over matters of statewide concern, a conclusion which the League does not dispute.

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the state action immunity in this case would, in accord with the purposes of the immunity, prevent nullification of sovereign powers granted to home rule municipalities by the people of Colorado.

C. Regulating the use of public rights-of-way is a local and municipal matter under Article XX.

Regulation of the use of municipal rights-of-way is a local and municipal matter under Article XX, as evidenced by the language of the Article and by court decisions interpreting that language.

Broad authority to regulate the use of public property within home rule municipalities is specifically granted by Article XX, section 1.[15] That section grants home rule municipalities the power to "own, possess, and hold all property, real and personal"; to "assume, manage, and dispose of all trusts in any way connected therewith"; to "purchase, receive, hold, and enjoy or sell and dispose of, real and personal property"; to "manage, sell, lease, or otherwise dispose of [all property received by bequest, gift or donation] in accordance with the terms of the gift, bequest, or trust"; and to "construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate . . . ways local in use and extent, in whole or in part, and everything required therefore [sic]. . . ."

Particularly applicable, however, is Article XX, section 4, which preserves the right of the people of a home rule municipality to approve any "franchise relating to any street, alley or public place" of the municipality.

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The *Sweet* case holds only that "the authority granted to home rule cities by Article XX may be taken away by subsequent amendments to the constitution." *City and County of Denver v. Sweet*, 138 Colo. at 49, 329 P. 2d at 445.

[15]By virtue of section 6 of Article XX, all home rule municipalities are granted the powers set out in sections 1, 4 and 5 of the Article.

This provision of Article XX gives the people of a home rule city "absolute control over the granting of franchises." *Berman v. City and County of Denver*, 120 Colo. 218, 229, 209 P. 2d 754, 760 (1949).[16] While the revocable permit issued to the petitioner by the City does not purport to be a franchise, it has some characteristics similar to a franchise, *i. e.*, granting petitioner certain special rights to occupy the public ways. *See City and County of Denver v. Stenger*, 295 F. at 814.

In addition, Colorado decisions have consistently upheld broad authority in home rule municipalities to determine how municipal property is used. In *McNichols v. City and County of Denver, supra*, the Court held that Denver has the authority under Article XX to donate municipal property to the federal government. In *City and County of Denver v. Hallett*, 34 Colo. 393, 83 P. 1066 (1905), Denver was held to possess the power to provide for the erection of a municipal auditorium, even though an auditorium was "not indispensable to the objects and purposes of the municipality as declared in the twentieth article." *Id.* at 398, 83 P. at 1068. In both cases, the Court stated that the test for determining the local and municipal character of a particular power "is whether the power, if exercised, will promote the general objects and purposes of the municipality. . . ." *McNichols v. City and County of Denver*, 101 Colo. at 324, 74 P. 2d at 103.

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[16]*See also*, Colorado Constitution, Article XXV which gives the state Public Utilities Commission the authority to regulate public utilities within home rule municipalities, but specifically preserves "the power of municipalities to exercise reasonable police and licensing powers," as well as "their power to grant franchises." While cable television is not a public utility within the meaning of Article XXV (*see In re: The Mountain States Telephone and Telegraph Co.*, PUC Decision No. 70749, reprinted at Petitioner's Petition for Writ of Certiorari, A-70), this provision indicates the local nature of municipal licensing powers over public ways. See Appendix F for a copy of Colorado Constitution, Article XXV.

Regulation of the use of city streets also has been repeatedly held to be a matter of local and municipal concern under Article XX. *See, e.g., People v. Hihzniak,* 195 Colo. 427, 479 P. 2d 1131 (1978) (regulating speed limits on city streets is matter of local concern under Article XX); *Pickett v. City of Boulder,* 144 Colo. 387, 356 P. 2d 489 (1960) (provision for stop at flashing red school light is a matter of local concern); and *City and County of Denver v. Henry, supra* (city ordinance regulating traffic at intersections is a matter of local concern which controls over a conflicting state statute). Finally, police power regulations (such as regulations of the use of public rights-of-way, *see* discussion *infra* at section III of this brief) are considered a "local and municipal matter" under Article XX. See *McCormick v. City of Montrose,* 105 Colo. 493, 99 P. 2d 969 (1940); and *City and County of Denver v. Stenger,* 295 F. at 814.

Generally, the question of whether an activity is a local and municipal matter under Article XX "depends upon the inherent nature of [the] activity and the impact or effect which it may have or may not have upon areas outside of the municipality." *Hamilton v. City and County of Denver,* 176 Colo. 6, 13, 490 P. 2d 1289, 1293 (1971). Boulder's regulation of the use of its rights-of-way has primarily a local, rather than statewide, impact. No portion of the City's challenged ordinances applies outside of the corporate limits, and CATV operators and customers outside the City are unaffected by Boulder's activities. The CATV services to be provided by petitioner under its Boulder permit are limited to City residents through the use of City streets. As stated by the Tenth Circuit: "The matter or subject is a local one." *Community Communications Co. v. City of Boulder,* 630 F. 2d at 707.

D. The City's policy of restricting the use of public rights-of-way is clearly articulated and affirmatively expressed, and is actively supervised by the City.

As found by the Tenth Circuit Court of Appeals, Boulder's policy is clearly articulated and affirmatively expressed, and actively supervised by the City. See the discussion in *Community Communications Co. v. City of Boulder*, 630 F. 2d at 708.

E. Recognition of Colorado's municipal home rule powers does not confer automatic immunity upon any municipality.

Petitioner and the *amici* attorneys general suggest that recognition of Boulder's constitutional home rule powers could automatically free thousands of cities across the country from all constraints of the federal antitrust laws. Brief of *amici curiae*, page 6, and petitioner's brief, page 44. Such argument is specious. Boulder does not claim antitrust immunity because of its *status* as a home rule municipality, but because the particular action it took and the power it exercised met every test for immunity required by this Court. Moreover, Boulder's claim to antitrust immunity here is narrowly drawn, based upon the following factors and findings, previously discussed:

1. A specific constitutional grant of authority, directly from the sovereign people of the state, to exercise the full right of self-government in "local and municipal matters" and to supersede any conflicting state statute relating to such matters. These grants make Colorado's home rule municipalities, including Boulder, the ultimate bodies wielding the state's sovereign power over local and municipal matters.

2. A finding that Boulder's action involved a "local and municipal matter" under that constitutional grant of

authority. This finding is made by the courts (not by the city), thus protecting against an abuse of power by home rule municipalities. In making this finding, courts may consider a variety of factors including the potential effect of the action outside the municipality.

3. A finding that the City's action taken under its home rule powers reflects a clearly articulated and affirmatively expressed policy of the City.

4. A finding that such policy is actively supervised by the City itself and is not merely a shield for private anticompetitive conduct.

III. If Boulder's action was taken pursuant to its statutory powers, the action is immune pursuant to principles set forth in Lafayette and Midcal.

Boulder's action, restricting petitioner's use of City rights-of-way, was taken pursuant to its constitutional home rule powers and is immune from antitrust attack for the reasons set forth in section II of this brief. Even if Boulder's action was taken pursuant to its statutory powers only, it is immune from antitrust attack under the principles established in *City of Lafayette v. Louisiana Power & Light Co., supra,* and *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., supra.*

A. Boulder's action was taken pursuant to a state policy to displace competition with regulation in the use of public rights-of-way.

For political subdivisions exercising only powers delegated from the state legislature, the *Lafayette* plurality opinion restricted *Parker* immunity to actions by the subdivision taken "pursuant to state policy to displace competition with regulation . . . ." 435 U. S. at 413. The state policy may be found by demonstrating "from the authority given a governmental entity to operate in a particular area,

that the legislature contemplated the kind of action complained of." *City of Lafayette v. Louisiana Power & Light Co., id.* at 415. No state compulsion of the political subdivision's action is required. *Id.* at 410 n. 40, and 415. Boulder's action, restricting petitioner's use of the City's rights-of-way, is within the contemplation of the state as evidenced by its statutory and constitutional grants of authority to the City.

(1) The state's policy is evidenced through its police power delegations to the City to regulate and prevent certain uses of the public rights-of-way.

Colorado's home rule municipalities have, in addition to their constitutional powers over "local and municipal matters," all the powers granted to statutory (non-home rule) cities, to the extent the statutory powers are not precluded by the particular home rule municipality's charter. *Woolverton v. City and County of Denver,* 146 Colo. 247, 361 P. 2d 982 (1961). *See* Klemme, U. Colo. L. Rev. at 326-327. In fact, most general municipal powers appearing in C. R. S. 1973, title 31 (1977 Repl. Vol.) (which contains the basic municipal grants of authority) are granted to "municipalities," a term defined in C. R. S. 1973, 31-1-101 (6) (1977 Repl. Vol.) to include specifically home rule municipalities.

Boulder's grant of a revocable permit to petitioner, and the City's subsequent restriction on petitioner's use of the public rights-of-way, rest upon the City's clear authority to regulate and restrict the use of public streets, alleys and other public places. *See* C. R. S. 1973, 31-15-702 (1977 Repl. Vol.). Specifically, 31-15-702 (1) (a) (I), (II) and (VI) grant the governing body of each "municipality" the power:

> (a) (I) To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, parks, and public grounds . . . ; to regulate the use of the same; to prevent and remove encroachments or obstructions upon the same . . . ;
>
> (II) To regulate the openings therein for the laying-out of gas or water mains and pipes, the building and repairing of sewers, tunnels, and drains, and the erecting of utility poles . . . ;
>
> (VI) To regulate and prevent the use of streets, parks, and public grounds for signs, signposts, awnings, awning posts, and power and communication poles. . . .

Each state grant of authority contemplates municipal regulation of the use of public rights-of-way and the prevention of physical facilities encroaching into the public streets, parks, and other public ways. Certainly the legislature did not contemplate free market competition in the use of public rights-of-way for the physical facilities of private enterprise. In fact, the protection of the public health and safety in the use of the public streets, sidewalks, and other areas demands displacement of competition with regulation of such use.

While the above statutes do not specifically mention CATV, they are broadly written, intending to anticipate technological changes over time and to permit regulation of *any* use of the public rights-of-way, regardless of its specific nature. Their timelessness is evidenced by the fact that they remain essentially similar to the original grant of street and right-of-way authority to municipalities in 1877,[17] one hundred and four years ago. However,

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[17] C. R. S. 1973, 31-15-702 (1977 Repl. Vol.) originated in the General Laws of Colorado, adopted in 1877 during the first session of the Colorado General Assembly held after statehood. See Appendix D for a copy of the original grant of authority now contained in that section.

two changes of particular interest in this case, broadening the statutory references, occurred in 1975 when all the municipal laws contained in title 31 were recodified. During that recodification, C. R. S. 1973, 31-15-702(1)(a)(II) (1977 Repl. Vol.), was broadened to allow municipal regulation of the "erecting of utility poles" (rather than merely "gas lights"); and 31-15-702 (1) (a) (VI) was broadened to allow municipalities to regulate and prevent the use of streets, parks, and public grounds for "power and communication poles" (rather than merely "telegraph poles"). Compare C. R. S. 1973, 31-12-101 (20) (a), (b) and (f),[18] with C. R. S. 1973, 31-15-702(1)(a)(I), (II) and (VI) (1977 Repl. Vol.) (which reflects title 31 after the recodification in 1975).

Other statutory and constitutional provisions reinforce the conclusion that the state contemplates displacement of competition with regulation in the use of municipal streets and rights-of-way. C. R. S. 1973, 31-15-501(1)-(c) (1977 Repl. Vol.) grants municipalities the general power to license and regulate businesses, thus contemplating some municipal restriction on the operation of market forces. The provisions of Colorado Constitution, Article XX, section 4 and Article XXV,[19] and C. R. S. 1973, 31-32-101—105 (1977 Repl. Vol.) also contemplate that municipalities will substitute regulation for competition as to services which typically would seek a franchise or similar rights to make special use of the public streets. Colorado Constitution, Article XX, section 4 contemplates power in home rule municipalities to grant franchises for the use of "any street, alley or public place," but only upon ap-

[18]A copy of C. R. S. 1973, 31-12-101 (20) (a), (b) and (f) as they existed prior to the 1975 recodification, is contained in Appendix E of this brief.

[19]A copy of Article XXV is contained in Appendix F of this brief.

proval of the franchise at an election. Denial of a franchise thus is a recognized possibility under the constitutional language. Article XXV, adopted in 1954 to transfer regulatory powers over public utilities from home rule municipalities to the state's Public Utilities Commission, expressly preserves "the power of municipalities to exercise reasonable police and licensing power, [and] their power to grant franchises." C. R. S. 1973, 31-15-101 (2) (1977 Repl. Vol.) grants municipalities every power necessary or convenient to the exercise of the specifically granted statutory powers (such as the power to regulate and control the use of the public streets and other public places). Finally, C. R. S. 1973, 43-2-124, as amended, and C. R. S. 1973, 43-2-135[20] vest full jurisdiction, responsibility, and control over municipal streets and rights-of-way (whether or not part of the state highway system) in municipalities. Similar authority granted to counties over county roads has been interpreted as granting to the local government the "sole right to authorize and control the use of the highway. . . . " *Lewis v. Lorenz,* 144 Colo. 23, 26, 354 P. 2d 1008, 1010 (1960).

Under settled Colorado law, the authority to regulate use of public streets and rights-of-way is part of the municipality's police power. In *City of Lakewood v. Haase,* 198 Colo. 47, 596 P. 2d 392 (1979), a statutory (non-home rule) city required that a more limited purpose government (a special district providing water and sanitation service only) obtain a permit from the City prior to effecting a street cut to repair the district's water lines. The Colorado Supreme Court upheld the City's permit requirement, stating that

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[20]A copy of C. R. S. 1973, 43-2-135 and 43-2-124 is contained in Appendix G of this brief.

> " . . . as between the proprietary powers given to the District and the police power to protect its citizens and streets given to the City, the police power prevails." *Id.*, 596 P. 2d at 394.

See City and County of Denver v. Stenger, 295 F. at 814 (Denver has the power to deny a special use of its streets or to grant under terms and compensation agreeable to the City; that power is a police power and compensation therefor is in the nature of a rental). And in *Packard v. Banton*, 264 U. S. 140, 144 (1924), the Supreme Court recognized broad authority for government regulation of use of the streets:

> The streets belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary and generally at least, may be prohibited or conditioned as the legislature deems proper.

Certainly the exercise by a municipality of its police power authority to regulate the use of the public streets, alleys and other public places, to prevent encroachments and obstructions therein, to regulate the erecting of utility poles therein, and to regulate and prevent the use of streets for power and communication poles is pursuant to long and clearly expressed state policy to displace competition with regulation in the use of the public streets and rights-of-way. Moreover, actions to grant, deny, or suspend permits to make special use of the public streets are contemplated within the statutory and constitutional police power grants of authority previously cited.

(2) Police power delegations sufficiently express state policy to displace competition with regulation.

In his dissent in *City of Lafayette v. Louisiana Power & Light Co.*, at 434-435, Justice Stewart (joined by Jus-

tice White, Justice Blackmun, and Justice Rehnquist) expressed concern that the Court's plurality opinion would result in "an extraordinary intrusion into the operation of state and local government in this country":

> Under our federal system, a State is generally free to allocate its governmental power to its political subdivisions as it wishes. A State may decide to permit its municipalities to exercise its police power without having to obtain approval of each law from the legislature. Such local self-government serves important state interests. It allows a state legislature to devote more time to statewide problems without being burdened with purely local matters and allows municipalities to deal quickly and flexibly with local problems. But today's decision, by demanding extensive legislative control over municipal action, will necessarily diminish the extent to which a State can share its powers with autonomous local governmental bodies.

The fears expressed by Justice Stewart will ripen into fact if this Court adopts a narrow view of antitrust immunity for police power-based municipal regulations. Certainly the Colorado statutes do not mention, and could not mention, every specific action which a municipality might take to exercise control over its public streets and which might have an anticompetitive effect. Nor do the Colorado statutes mention specifically, nor could they mention, every business which may wish to make a special use of the public streets and thus be subject to regulation. Yet exercises of the police power often have an anticompetitive effect (*i.e.*, denying a rezoning, prohibiting the location of businesses in other than established business zone districts, licensing businesses, granting or denying building permits or subdivision plats, granting or denying franchises, licenses or permits for special uses of the public streets, and so forth) and may subject mu-

nicipalities to costly antitrust litigation, the mere defense of which presents a financial and administrative burden to the community and its officials and may inhibit necessary exercises of the power.

Broad legislative grants do not exist only with respect to control over municipal streets. Rather, the great majority of the police powers granted to Colorado's municipalities have been and remain broadly worded grants of authority. See, *e.g.*, the general powers granted in C. R. S. 1973, 31-15-101 through 31-15-902 (1977 Repl. Vol.); the grant of municipal zoning powers in C. R. S. 1973, 31-23-301 through 31-23-313 (1977 Repl. Vol.) (which have remained much the same as originally adopted by the General Assembly in 1923, *see* 1923 Colo. Sess. Laws 649-655); and the grant of municipal subdivision powers in C. R. S. 1973, 31-23-201 through 31-23-226 (1977 Repl. Vol.) (which have remained much the same as originally adopted by the General Assembly in 1929, *see* 1929 Colo. Sess. Laws 219-241). These broad delegations of police power authority to Colorado's municipalities reflect the historical view of the courts that the standards required for delegating state authority to administrative or executive agencies do *not* apply to state delegations of regulatory authority to municipalities. 1 C. D. Sands, *Sutherland Statutory Construction* § 4.07, p. 80 (4th ed. 1972).

Any requirement of greater specificity in delegations of police power authority would in fact cause great disruption in traditional state and local government divisions of regulatory responsibility, and would have a chilling effect on municipal exercise of regulatory powers under historically broad grants of authority.

B. The state's policy is clearly articulated and affirmatively expressed, and is actively supervised by the state directly and through its municipal agents.

The previously cited statutes and constitutional provisions clearly articulate and affirmatively express a state policy for regulating and even preventing some uses of municipal streets and rights-of-way. That policy is actively supervised by the state directly and through its municipal agents.

The state contemplates the enforcement of street controls and regulations by municipalities, as agents of the state for enforcement purposes. *See City of Lafayette v. Louisiana Power & Light Co.*, 435 U. S. at n. 40, 411. Pursuant to C. R. S. 1973, 31-16-101 (1977 Repl. Vol.), municipalities are authorized to enforce obedience to any municipal ordinance by a fine not to exceed three hundred dollars, or ninety days in jail, or both such penalties. Statutes and constitutional provisions, previously discussed, relating to issuance of franchises, licenses and permits for special business uses of public streets, clearly contemplate denial, revocation or suspension of the franchises, licenses or permits under appropriate circumstances. Moreover, the state ensures that individuals potentially injured by a municipal ordinance may test its legality in the state courts through a declaratory judgment proceeding which specifically permits review of municipal ordinances. C. R. S. 1973, 13-51-105 through 13-51-115; and Colo. R. Civ. P. 57. And of course, the state legislature may remove or limit a statutory municipality's power to regulate or prevent the use of its public streets and rights-of-way.

Thus, Boulder's action, restricting petitioner's use of the City's rights-of-way, meets each of the relevant requirements for a state action immunity as set forth in *Lafayette* and *Midcal:* it is taken pursuant to a state policy to displace competition with regulation in the use of public rights-of-way; the state's policy is clearly articulated and affirmatively expressed; and the policy is actively supervised by the state directly and through its municipal agents.

CONCLUSION

Based upon the foregoing, Boulder's action restricting petitioner's use of City rights-of-way is immune from antitrust attack and the decision of the Tenth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX A

COLORADO CONSTITUTION ARTICLE XX, AS AMENDED THROUGH 1981

ARTICLE XX

HOME RULE CITIES AND TOWNS

Section 1. Incorporated. The municipal corporation known as the city of Denver and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the state of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver". By that name said corporation shall have perpetual succession, and shall own, possess, and hold all property, real and personal, theretofore owned, possessed, or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed, or held by the said county of Arapahoe, and shall assume, manage, and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities, and shall acquire all benefits and shall assume and pay all bonds, obligations, and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold, and enjoy or sell and dispose of, real and personal property; may receive bequests, gifts, and dona-

tions of all kinds of property, in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefor, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided.

The provisions of section 3 of article XIV of this constitution and the general annexation and consolidation statutes of the state relating to counties shall apply to the city and county of Denver. Any contiguous town, city, or territory hereafter annexed to or consolidated with the city and county of Denver, under any such laws of this state, in whatsoever county the same may be at the time, shall be detached per se from such other county

and become a municipal and territorial part of the city and county of Denver, together with all property thereunto belonging.

The city and county of Denver shall alone always constitute one judicial district of the state.

[Annexation requirements for the City and County of Denver have been omitted.]

Section 2. Officers. The officers of the city and county of Denver shall be such as by appointment or election may be provided for by the charter; and the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided; but the charter shall designate the officers who shall, respectively, perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable. If any officer of said city and county of Denver shall receive any compensation whatever, he or she shall receive the same as a stated salary, the amount of which shall be fixed by the charter, or, in the case of officers not in the classified civil service, by ordinance within limits fixed by the charter, and paid out of the treasury of the city and county of Denver in equal monthly payments; provided, however, no elected officer shall receive any increase or decrease in compensation under any ordinance passed during the term for which he was elected.

Section 3. Transfer of government. Immediately upon the canvass of the vote showing the adoption of this amendment, it shall be the duty of the governor of the state to issue his proclamation accordingly, and thereupon the city of Denver, and all municipal corporations and that

part of the county of Arapahoe within the boundaries of said city, shall merge into the city and county of Denver, and the terms of office of all officers of the city of Denver and of all included municipalities and of the county of Arapahoe shall terminate; except, that the then mayor, auditor, engineer, council (which shall perform the duties of a board of county commissioners), police magistrate, chief of police and boards, of the city of Denver shall become, respectively, said officers of the city and county of Denver, and said engineer shall be ex officio surveyor and said chief of police shall be ex officio sheriff of the city and county of Denver; and the then clerk and ex officio recorder, treasurer, assessor and coroner of the county of Arapahoe, and the justices of the peace and constables holding office within the city of Denver, shall become, respectively, said officers of the city and county of Denver, and the district attorney shall also be ex officio attorney of the city and county of Denver. The foregoing officers shall hold the said offices as above specified only until their successors are duly elected and qualified as herein provided for; except that the then district judges, county judge and district attorney shall serve their full terms, respectively, for which elected. The police and firemen of the city of Denver, except the chief of police as such, shall continue severally as the police and firemen of the city and county of Denver until they are severally discharged under such civil service regulations as shall be provided by the charter; and every charter shall provide that the department of fire and police and the department of public utilities and works shall be under such civil service regulations as in said charter shall be provided.

Section 4. First charter. The charter and ordinances of the city of Denver as the same shall exist when this

amendment takes effect, shall, for the time being only, and as far as applicable, be the charter and ordinances of the city and county of Denver; but the people of the city and county of Denver are hereby vested with and they shall always have the exclusive power in the making, altering, revising or amending their charter and, within ten days after the proclamation of the governor announcing the adoption of this amendment the council of the city and county of Denver shall, by ordinance, call a special election, to be conducted as provided by law, of the qualified electors in said city and county of Denver, for the election of twenty-one taxpayers who shall have been qualified electors within the limits thereof for at least five years, who shall constitute a charter convention to frame a charter for said city and county in harmony with this amendment. Immediately upon completion, the charter so framed, with a prefatory synopsis, shall be signed by the officers and members of the convention and delivered to the clerk of said city and county who shall publish the same in full, with his official certification, in the official newspaper of said city and county, three times, and a week apart, the first publication being with the call for a special election, at which the qualified electors of said city and county shall by vote express their approval or rejection of the said charter. If the said charter shall be approved by a majority of those voting thereon, then two copies thereof (together with the vote for and against) duly certified by the said clerk, shall, within ten days after such vote is taken, be filed with the secretary of state, and shall thereupon become and be the charter of the city and county of Denver. But if the said charter be rejected, then, within thirty days thereafter, twenty-one members of a new char-

ter convention shall be elected at a special election to be called as above in said city and county, and they shall proceed as above to frame a charter, which shall in like manner and to the like end be published and submitted to a vote of said voters for their approval or rejection. If again rejected, the procedure herein designated shall be repeated (each special election for members of a new charter convention being within thirty days after each rejection) until a charter is finally approved by a majority of those voting thereon, and certified (together with the vote for and against) to the secretary of state as aforesaid, whereupon it shall become the charter of the said city and county of Denver and shall become the organic law thereof, and supersede any existing charters and amendments thereof. The members of each of said charter conventions shall be elected at large; and they shall complete their labors within sixty days after their respective election.

Every ordinance for a special election of charter convention members shall fix the time and place where the convention shall be held, and shall specify the compensation, if any, to be paid the officers and members thereof, allowing no compensation in cases of non-attendance or tardy attendance, and shall fix the time when the vote shall be taken on the proposed charter, to be not less than thirty days nor more than sixty days after its delivery to the clerk. The charter shall make proper provision for continuing, amending or repealing the ordinances of the city and county of Denver.

All expenses of charter conventions shall be paid out of the treasury upon the order of the president and sec-

retary thereof. The expenses of elections for charter conventions and of charter votes shall be paid out of the treasury upon the order of the council.

No franchise relating to any street, alley or public place of the said city and county shall be granted except upon the vote of the qualified taxpaying electors, and the question of its being granted shall be submitted to such vote upon deposit with the treasurer of the expense (to be determined by said treasurer) of such submission by the applicant for said franchise. The council shall have power to fix the rate of taxation on property each year for city and county purposes.

Section 5. New charters, amendments or measures. The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided;

It shall be competent for qualified electors in number not less than five percent of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election not held within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten percent of the next preceding gubernatorial vote in said city and county, with a request for a special election, the council shall submit it at a special election to be held not less than thirty nor more than sixty days from the date of filing the petition; provided, that any question so submitted at a special election shall not again be submitted at a special election within two

years thereafter. In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspapers, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which is to be submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certify to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference upon proper petition therefor, of measures passed by the council to a

vote of the qualified electors, and for the initiative by the qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or elsewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state purposes, fixed by act of the general assembly, or interfere in any wise with the collection of state taxes.

The city council, or board of trustees, or other body in which the legislative powers of any home rule city or town may then be vested, on its own initiative, may submit any measure, charter amendment, or the question whether or not a charter convention shall be called, at any general or special state or municipal election held not less than 30 days after the effective date of the ordinance or resolution submitting such question to the voters.

Section 6. Home rule for cities and towns. The people of each city or town of this state, having a population of two thousand inhabitants as determined by the last preceding census taken under the authority of the United States, the state of Colorado or said city or town, are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city

or town, which shall be its organic law and extend to all its local and municipal matters.

Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith.

Proposals for charter conventions shall be submitted by the city council or board of trustees, or other body in which the legislative powers of the city or town shall then be vested, at special elections, or at general, state or municipal elections, upon petition filed by qualified electors, all in reasonable conformity with section 5 of this article, and all proceedings thereon or thereafter shall be in reasonable conformity with sections 4 and 5 of this article.

From and after the certifying to and filing with the secretary of state of a charter framed and approved in reasonable conformity with the provisions of this article, such city or town, and the citizens thereof, shall have the powers set out in sections 1, 4 and 5 of this article, and all other powers necessary, requisite or proper for the government and administration of its local and municipal matters, including power to legislate upon, provide, regulate, conduct and control:

a. The creation and terms of municipal officers, agencies and employments; the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;

b. The creation of police courts; the definition and regulation of the jurisdiction, powers and duties thereof,

and the election or appointment of police magistrates therefor;

c. The creation of municipal courts; the definition and regulation of the jurisdiction, powers and duties thereof, and the election or appointment of the officers thereof;

d. All matters pertaining to municipal elections in such city or town, and to electoral votes therein on measures submitted under the charter or ordinances thereof, including the calling or notice and the date of such election or vote, the registration of voters, nominations, nomination and election systems, judges and clerks of election, the form of ballots, balloting, challenging, canvassing, certifying the result, securing the purity of elections, guarding against abuses of the elective franchise, and tending to make such elections or electoral votes non-partisan in character;

e. The issuance, refunding and liquidation of all kinds of municipal obligations, including bonds and other obligations of park, water and local improvement districts;

f. The consolidation and management of park or water districts in such cities or towns or within the jurisdiction thereof; but no such consolidation shall be effective until approved by the vote of a majority, in each district to be consolidated, of the qualified electors voting therein upon the question;

g. The assessment of property in such city or town for municipal taxation and the levy and collection of taxes thereon for municipal purposes and special assessments for local improvements; such assessments, levy and col-

lection of taxes and special assessments to be made by municipal officials or by the county or state officials as may be provided by the charter;

h. The imposition, enforcement and collection of fines and penalties for the violation of any of the provisions of the charter, or of any ordinance adopted in pursuance of the charter.

It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.

The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters.

All provisions of the charters of the city and county of Denver and the cities of Pueblo, Colorado Springs and Grand Junction, as heretofore certified to and filed with the secretary of state, and of the charter of any other city heretofore approved by a majority of those voting thereon and certified to and filed with the secretary of state, which provisions are not in conflict with this article, and all elections and electoral votes heretofore had under and pursuant thereto, are hereby ratified, affirmed and validated as of their date.

Any act in violation of the provisions of such charter or of any ordinance thereunder shall be criminal and pun-

ishable as such when so provided by any statute now or hereafter in force.

The provisions of this section 6 shall apply to the city and county of Denver.

This article shall be in all respects self-executing.

Section 7. City and county of Denver single school district - consolidations. The city and county of Denver shall alone always constitute one school district, to be known as District No. 1, but its conduct, affairs and business shall be in the hands of a board of education consisting of such numbers, elected in such manner as the general school laws of the state shall provide, and until the first election under said laws of a full board of education which shall be had at the first election held after the adoption of this amendment, all the directors of school district No. 1, and the respective presidents of the school boards of school districts Nos. 2, 7, 17 and 21, at the time this amendment takes effect, shall act as such board of education, and all districts or special charters now existing are hereby abolished.

The said board of education shall perform all the acts and duties required to be performed for said district by the general laws of the state. Except as inconsistent with this amendment, the general school laws of the state shall, unless the context evinces a contrary intent, be held to extend and apply to the said "District No. 1".

Upon the annexation of any contiguous municipality which shall include a school district or districts or any part of a district, said school district or districts or part shall be merged in said "District No. 1", which shall then own all the property thereof, real and personal, located within

the boundaries of such annexed municipality, and shall assume and pay all the bonds, obligations and indebtedness of each of the said included school districts, and a proper proportion of those of partially included districts.

Provided, however, that the indebtedness, both principal and interest, which any school district may be under at the time when it becomes a part, by this amendment or by annexation, of said "District No. 1", shall be paid by said school district so owing the same by a special tax to be fixed and certified by the board of education to the council which shall levy the same upon the property within the boundaries of such district, respectively, as the same existed at the time such district becomes a part of said "District No. 1", and in case of partially included districts such tax shall be equitably apportioned upon the several parts thereof.

Section 8. Conflicting constitutional provisions declared inapplicable. Anything in the constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for.

Section 9. Procedure and requirements for adoption. (1) Notwithstanding any provision in sections 4, 5, and 6 of this article to the contrary, the qualified electors of each city and county, city, and town of the state are hereby vested with the power to adopt, amend, and repeal a home rule charter.

(2) The general assembly shall provide by statute procedures under which the qualified electors of any pro-

posed or existing city and county, city, or town may adopt, amend, and repeal a municipal home rule charter. Action to initiate home rule shall be by petition, signed by not less than five percent of the qualified electors of the proposed or existing city and county, city, or town, or by proper ordinance by the city council or board of trustees of a town, submitting the question of the adoption of a municipal home rule charter to the qualified electors of the city and county, city, or town. No municipal home rule charter, amendment thereto, or repeal thereof, shall become effective until approved by a majority of the qualified electors of such city and county, city, or town voting thereon. A new city or town may acquire home rule status at the time of its incorporation.

(3) The provisions of this article as they existed prior to the effective date of this section, as they relate to procedures for the initial adoption of home rule charters and for the amendment of existing home rule charters, shall continue to apply until superseded by statute.

(4) It is the purpose of this section to afford to the people of all cities, cities and counties, and towns the right to home rule regardless of population, period of incorporation, or other limitation, and for this purpose this section shall be self-executing. It is the further purpose of this section to facilitate adoption and amendment of home rule through such procedures as may hereafter be enacted by the general assembly.

APPENDIX B

COLORADO CONSTITUTION ARTICLE XX AS ORIGINALLY ADOPTED IN 1902

ARTICLE XX.

CITY AND COUNTY OF DENVER.

INCORPORATION.

Section 1. The municipal corporation known as the city of Denver, and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the State of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver." By that name said corporation shall have perpetual succession, and shall own, possess and hold all property, real and personal, theretofore owned, possessed or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed or held by the said county of Arapahoe, and shall assume, manage and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities, and shall acquire all benefits, and shall assume and pay all bonds, obligations and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold and enjoy, or sell and dispose of, real and personal property; may receive

bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests and donations, with power to manage, sell, lease or otherwise dispose of the same in accordance with the terms of the gift, bequest or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct and operate, water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefor, for the use of said city and county and the inhabitants thereof, and any such systems plants or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided.

The general annexation and consolidation statutes of the state shall apply to the city and county of Denver to the same extent and in the same manner that they would apply to the city of Denver if it were not merged, as in this amendment provided, into the city and county of Denver. Any contiguous town, city or territory hereafter annexed to or consolidated with the city and county

of Denver, under any of the laws of this state, in whatsoever county the same may be at the time, shall be detached per se from such other county and become a municipal and territorial part of the city and county of Denver, together with all property thereunto belonging.

The city and county of Denver shall alone always constitute one judicial district of the state.

OFFICERS.

Sec. 2. The officers of the city and county of Denver shall be such as by appointment or election may be provided for by the charter; and the jurisdiction, term of office, duties and qualifications of all such officers shall be such as in the charter may be provided; but every charter shall designate the officers who shall, respectively, perform the acts and duties required of county officers to be done by the constitution or by the general law, as far as applicable. If any officer of said city and county of Denver shall receive any compensation whatever, he or she shall receive the same as a stated salary, the amount of which shall be fixed by the charter, and paid out of the treasury of the city and county of Denver in equal monthly payments.

Sec. 3. Immediately upon the canvass of the vote showing the adoption of this amendment, it shall be the duty of the governor of the state to issue his proclamation accordingly, and thereupon the city of Denver, and all municipal corporations and that part of the county of Arapahoe within the boundaries of said city, shall merge into the city and county of Denver, and the terms of office of all officers of the city of Denver and of all included municipalities and of the county of Arapahoe shall

terminate; except, that the then mayor, auditor, engineer, council (which shall perform the duties of a board of county commissioners), police magistrate, chief of police and boards, of the city of Denver shall become, respectively, said officers of the city and county of Denver, and said engineer shall be ex officio surveyor and said chief of police shall be ex officio sheriff of the city and county of Denver; and the then clerk and ex officio recorder, treasurer, assessor and coroner of the county of Arapahoe, and the justices of the peace and constables holding office within the city of Denver, shall become, respectively, said officers of the city and county of Denver, and the district attorney shall also be ex officio attorney of the city and county of Denver. The foregoing officers shall hold the said offices as above specified only until their successors are duly elected and qualified as herein provided for; except that the then district judges, county judge and district attorney shall serve their full terms, respectively, for which elected. The police and firemen of the city of Denver, except the chief of police as such, shall continue severally as the police and firemen of the city and county of Denver until they are severally discharged under such civil service regulations as shall be provided by the charter; and every charter shall provide that the department of fire and police and the department of public utilities and works shall be under such civil service regulations as in said charter shall be provided.

FIRST CHARTER.

Sec. 4. The charter and ordinances of the city of Denver as the same shall exist when this amendment takes effect, shall, for the time being only, and as far as

applicable, be the charter and ordinances of the city and county of Denver; but the people of the city and county of Denver are hereby vested with and they shall always have the exclusive power in the making, altering, revising or amending their charter, and, within ten days after the proclamation of the Governor announcing the adoption of this amendment the council of the city and county of Denver shall, by ordinance, call a special election, to be conducted as provided by law, of the qualified electors in said city and county of Denver, for the election of twenty-one taxpayers who shall have been qualified electors within the limits thereof for at least five years, who shall constitute a charter convention to frame a charter for said city and county in harmony with this amendment. Immediately upon completion, the charter so framed, with a prefatory synopsis, shall be signed by the officers and members of the conveitnon and delivered to the clerk of said city and county who shall publish the same in full, with his official certification, in the official newspaper of said city and county, three times, and a week apart, the first publication being with the call for a special election, at which the qualified electors of said city and county shall by vote express their approval or rejection of the said charter. If the said charter shall be approved by a majority of those voting thereon, then two copies thereof (together with the vote for and against) duly certified by the said clerk, shall, within ten days after such vote is taken, be filed with the secretary of state, and shall thereupon become and be the charter of the city and county of Denver. But if the said charter be rejected, then, within thirty days thereafter, twenty-one members of a new charter convention shall be elected at a special election to be called as above in said city and county,

and they shall proceed as above to frame a charter, which shall in like manner and to the like end be published and submitted to a vote of said voters for their approval or rejection. If again rejected, the procedure herein designated shall be repeated (each special election for members of a new charter convention being within thirty days after each rejection) until a charter is finally approved by a majority of those voting thereon, and certified (together with the vote for and against) to the secretary of state as aforesaid, whereupon it shall become the charter of the said city and county of Denver and shall become the organic law thereof, and supersede any existing charters and amendments thereof. The members of each of said charter conventions shall be elected at large; and they shall complete their labors within sixty days after their respective election.

Every ordinance for a special election of charter convention members shall fix the time and place where the convention shall be held, and shall specify the compensation, if any, to be paid the officers and members thereof, allowing no compensation in case of non-attendance or tardy attendance, and shall fix the time when the vote shall be taken on the proposed charter, to be not less than thirty days nor more than sixty days after its delivery to the clerk. The charter shall make proper provision for continuing, amending or repealing the ordinances of the city and county of Denver.

All expenses of charter conventions shall be paid out of the treasury upon the order of the president and secretary thereof. The expenses of elections for charter conventions and of charter votes shall be paid out of the treasury upon the order of the council.

No franchise relating to any street, alley or public place of the said city and county shall be granted except upon the vote of the qualified taxpaying electors, and the question of its being granted shall be submitted to such vote upon deposit with the treasurer of the expense (to be determined by said treasurer) of such submission by the applicant for said franchise. The council shall have power to fix the rate of taxation on property each year for city and county purposes.

NEW CHARTERS, AMENDMENTS OF MEASURES.

Sec. 5. The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided;

It shall be competent for qualified electors in number not less than five per cent. of the next preceding gubernatorial vote in said city and county to petition the council for any measure, or charter amendment, or for a charter convention. The council shall submit the same to a vote of the qualified electors at the next general election not held within thirty days after such petition is filed; whenever such petition is signed by qualified electors in number not less than ten per cent. of the next preceding gubernatorial vote in said city and county, with a request for a special election, the council shall submit it at a special election to be held not less than thirty nor more than sixty days from the date of filing the petition; Provided, That any question so submitted at a special election shall not again be submitted at a special election within two years thereafter. In submitting any such charter, charter amendment or measure, any alternative article or proposition may be presented for the choice of

the voters, and may be voted on separately without prejudice to others. Whenever the question of a charter convention is carried by a majority of those voting thereon, a charter convention shall be called through a special election ordinance as provided in section four (4) hereof, and the same shall be constituted and held and the proposed charter submitted to a vote of the qualified electors, approved or rejected, and all expenses paid, as in said section provided.

The clerk of the city and county shall publish, with his official certification, for three times, a week apart, in the official newspaper, the first publication to be with his call for the election, general or special, the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which is to be submitted to the voters. Within ten days following the vote the said clerk shall publish once in said newspaper the full text of any charter, charter amendment, measure, or proposal for a charter convention, or alternative article or proposition, which shall have been approved by a majority of those voting thereon, and he shall file with the secretary of state two copies thereof (with the vote for and against) officially certified by him, and the same shall go into effect from the date of such filing. He shall also certify to the secretary of state, with the vote for and against, two copies of every defeated alternative article or proposition, charter, charter amendment, measure or proposal for a charter convention. Each charter shall also provide for a reference, upon proper petition therefor, of measures passed by the council to a vote of the qualified electors, and for the initiative by the

qualified electors of such ordinances as they may by petition request.

The signatures to petitions in this amendment mentioned need not all be on one paper. Nothing herein or elsewhere shall prevent the council, if it sees fit, from adopting automatic vote registers for use at elections and references.

No charter, charter amendment or measure adopted or defeated under the provisions of this amendment shall be amended, repealed or revived, except by petition and electoral vote. And no such charter, charter amendment or measure shall diminish the tax rate for state purposes fixed by act of the General Assembly, or interfere in any wise with the collection of state taxes.

CITIES OF THE FIRST AND SECOND CLASS

Sec. 6. Cities of the first and second class in this state, are hereby empowered to propose for submission to a vote of the qualified electors, proposals for charter conventions and to hold the same, and to amend any such charter, with the same force and in the same manner and have the same power, as near as may be, as set out in sections four (4) and five (5) hereof, with full power as to real and personal property and public utilities, works or ways, as set out in section one (1) of this amendment.

SCHOOL DISTRICTS CONSOLIDATED

Sec. 7. The city and county of Denver shall alone always constitute one school district, to be known as District No. 1, but its conduct, affairs and business shall be in the hands of a board of education consisting of such

numbers, elected in such manner as the general school laws of the state shall provide, and until the first election under said laws of a full board of education which shall be had at the first election held after the adoption of this amendment, all the directors of school district No. 1, and the respective presidents of the school boards of school districts Nos. 2, 7, 17 and 21, at the time this amendment takes effect, shall act as such board of education, and all districts or special charters now existing are hereby abolished.

The said board of education shall perform all the acts and duties required to be performed for said district by the general laws of the state. Except as inconsistent with this amendment, the general school laws of the state shall, unless the context evinces a contrary intent, be held to extend and apply to the said "District No. 1."

Upon the annexation of any contiguous municipality which shall include a school district or districts or any part of a district, said school district or districts or part shall be merged in said "District No. 1," which shall then own all the property thereof, real and personal, located within the boundaries of such annexed municipality, and shall assume and pay all the bonds, obligations and indebtedness of each of the said included school districts, and a proper proportion of those of partially included districts;

Provided, however, That the indebtedness, both principal and interest, which any school district may be under at the time when it becomes a part, by this amendment or by annexation, of said "District No. 1," shall be

paid by said school district so owing the same by a special tax to be fixed and certified by the board of education to the council which shall levy the same upon the property within the boundaries of such district, respectively, as the same existed at the time such district becomes a part of said "District No. 1," and in case of partially included districts such tax shall be equitably apportioned upon the several parts thereof.

Sec. 8. Anything in the Constitution of this state in conflict or inconsistent with the provisions of this amendment is hereby declared to be inapplicable to the matters and things by this amendment covered and provided for.

APPENDIX C

COLORADO CONSTITUTION ARTICLE V, SECTION 1

LEGISLATIVE DEPARTMENT

Section 1. General assembly—initiative and referendum. (1) The legislative power of the state shall be vested in the general assembly consisting of a senate and house of representatives, both to be elected by the people, but the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the general assembly and also reserve power at their own option to approve or reject at the polls any act or item, section, or part of any act of the general assembly.

(2) The first power hereby reserved by the people is the initiative, and signatures by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of secretary of state at the previous general election shall be required to propose any measure by petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions for state legislation and amendments to the constitution, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state at least three months before the general election at which they are to be voted upon.

(3) The second power hereby reserved is the referendum, and it may be ordered, except as to laws necessary for the immediate preservation of the public peace, health, or safety, and appropriations for the support and maintenance of the departments of state and state institutions, against any act or item, section, or part of any act of the general assembly, either by a petition signed by registered electors in an amount equal to at least five percent of the total number of votes cast for all candidates for the office of the secretary of state at the previous general election or by the general assembly. Referendum petitions, in such form as may be prescribed pursuant to law, shall be addressed to and filed with the secretary of state not more than ninety days after the final adjournment of the session of the general assembly that passed the bill on which the referendum is demanded. The filing of a referendum petition against any item, section, or part of any act shall not delay the remainder of the act from becoming operative.

(4) The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. This section shall not be construed to deprive the general assembly of the power to enact any measure.

(5) The original draft of the text of proposed initiated constitutional amendments and initiated laws shall be submitted to the legislative research and drafting offices of the general assembly for review and comment. No later than two weeks after submission of the original draft, unless withdrawn by the proponents, the legislative research and drafting offices of the general assembly shall render their comments to the proponents of the proposed measure at a meeting open to the public, which shall be held only after full and timely notice to the public. Such meeting shall be held prior to the fixing of a ballot title. Neither the general assembly nor its committees or agencies shall have any power to require the amendment, modification, or other alteration of the text of any such proposed measure or to establish deadlines for the submission of the original draft of the text of any proposed measure.

(6) The petition shall consist of sheets having such general form printed or written at the top thereof as shall

be designated or prescribed by the secretary of state; such petition shall be signed by registered electors in their own proper persons only, to which shall be attached the residence address of such person and the date of signing the same. To each of such petitions, which may consist of one or more sheets, shall be attached an affidavit of some registered elector that each signature thereon is the signature of the person whose name it purports to be and that, to the best of the knowledge and belief of the affiant, each of the persons signing said petition was, at the time of signing, a registered elector. Such petition so verified shall be prima facie evidence that the signatures thereon are genuine and true and that the persons signing the same are registered electors.

(7) The secretary of state shall submit all measures initiated by or referred to the people for adoption or rejection at the polls, in compliance with this section. The text of all measures to be submitted shall be published as constitutional amendments are published; and, in submitting the same and in all matters pertaining to the form of all petitions, the secretary of state and all other officers shall be guided by the general laws.

(8) The style of all laws adopted by the people through the initiative shall be, "Be it Enacted by the People of the State of Colorado".

(9) The initiative and referendum powers reserved to the people by this section are hereby further reserved to the registered electors of every city, town, and municipality as to all local, special, and municipal legislation of every character in or for their respective municipalities. The manner of exercising said powers shall be prescribed

by general laws; except that cities, towns, and municipalities may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten percent of the registered electors may be required to order the referendum nor more than fifteen percent to propose any measure by the initiative in any city, town, or municipality.

(10) This section of the constitution shall be in all respects self-executing; except that the form of the initiative or referendum petition may be prescribed pursuant to law.

APPENDIX D

AMMENDED GENERAL LAWS OF COLORADO, 1877

2655. Sec. 14. The city council and board of trustees in towns shall have the following powers:—

[First through Sixth powers omitted.]

Seventh—First, to lay out, establish, open, alter, widen, extend, grade, pave or otherwise improve streets, alleys, avenues, sidewalks, parks and public grounds, and vacate the same, and to direct and regulate the planting of ornamental and shade trees in such streets, avenues and public grounds; second, to plant trees upon the same; third, to regulate the use of the same; fourth, to prevent and remove encroachments or obstructions upon the same; fifth, to provide for the lighting of the same; sixth, to provide for the cleansing of the same; seventh, to regulate the openings therein for the laying out of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas lights; *provided, however,* that any

company heretofore organized under the general laws of this state, or any association of persons organized, or which may be hereafter organized, for the purpose of manufacturing illuminating gas to supply cities or towns or the inhabitants thereof with the same, shall have the *right by consent* of the city council or town trustees, but not without such consent, (subject to existing rights,) to erect gas factories and lay down pipes in the streets or alleys of any city or town in this state, subject to such regulations as any such city or town may, by ordinance, impose; eighth, to regulate the use of sidewalks along the streets and alleys, and all structures thereunder, and to require the owner or occupant of any premises to keep the sidewalks, or along the same, free from snow and other obstructions; ninth, to regulate and prevent the throwing or depositing of ashes, garbage or any offensive matter in, and to prevent injury to, any street, avenue, alley or public ground; tenth, to provide for and regulate crosswalks, curbs and gutters; eleventh, to regulate and prevent the use of streets, sidewalks and public grounds for signs, sign posts, awnings, awning posts, telegraph poles, horse troughs, posting handbills and advertisements; twelfth, to regulate and prohibit the exhibition or carrying of banners, placards, advertisements or hand-bills in the streets or public grounds, or upon the sidewalks; thirteenth, to regulate and prevent the flying of flags, banners or signs across the streets or from houses; fourteenth, to regulate traffic and sales upon the streets, sidewalks and public places; fifteenth, to regulate the speed or horses and other animals, vehicles, cars and locomotives within the limits of the corporation; sixteenth, to regulate the numbering of houses and lots; seventeenth, to name and change the name of any street, avenue, alley or other

public place; eighteenth, to license, regulate and control the laying of railroad tracks to provide for and change the location, grade and crossing of any railroad, and to control, regulate and prohibit the use of steam engines and locomotives propelled by steam power within the corporate limits; nineteenth, to require railroad companies to fence their respective railroads, or any portion of the same, and to construct cattle guards at crossings of streets and public roads, and keep the same in repair within the limits of the corporation; twentieth, to require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads; twenty-first, to compel such railroads to raise or lower their railroad tracks to conform to any grade which may, at any time, be established by such city or town, and when such tracks run lengthwise of any street, alley or highway, to keep their tracks on a level with the street surface, and so that such tracks may be crossed at any place on such street, alley, or highway.

APPENDIX E

C. R. S. 1973, § 31-12-101 (20)

31-12-101. *Powers of governing bodies.* The governing bodies in cities and towns shall have the following powers:

[Subsections 1-19 omitted.]

(20) *Streets and public grounds.* (a) To lay out, establish, open, alter, widen, extend, grade, pave, or otherwise improve streets, alleys, avenues, sidewalks, parks, and public grounds and vacate the same and to direct and regu-

late the planting of ornamental and shade trees in such streets, avenues, and public grounds; to plant trees upon the same; to regulate the use of the same; to prevent and remove encroachments or obstructions upon the same; to provide for the lighting of the same; and to provide for the cleansing of the same;

(b) To regulate the openings therein for the laying-out of gas or water mains and pipes, and the building and repairing of sewers, tunnels, and drains, and the erecting of gaslights. Any company organized under the general laws of this state or any association of persons organized for the purpose of manufacturing illuminating gas to supply cities or towns or the inhabitants thereof with the same has the right by consent of the city council or town trustees, but not without such consent, subject to existing rights, to erect gas factories and lay down pipes in the streets or alleys of any city or town in the state, subject to such regulations as any such city or town by ordinance may impose;

(c) To regulate the use of sidewalks along the streets and alleys and all structures thereunder and to require the owner or occupant of any premises to keep the sidewalks, or along the same, free from snow and other obstructions;

(d) To regulate and prevent the throwing or depositing of ashes, garbage, or any offensive matter in, and to prevent any injury to, any street, avenue, alley, or public ground;

(e) To provide for and regulate crosswalks, curbs, and gutters;

(f) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, signposts, awnings,

awning posts, telegraph poles, and horse troughs and for posting handbills and advertisements; to regulate and prohibit the exhibition or carrying of banners, placards, advertisements, or handbills in the streets or public grounds or upon the sidewalks; and to regulate and prevent the flying of flags, banners, or signs across the streets or from houses;

(g) To regulate traffic and sales upon the streets, sidewalks, and public places and to regulate the speed of horses and other animals, vehicles, cars, and locomotives within the limits of the corporation;

(h) To regulate the numbering of houses and lots and to name and change the name of any street, avenue, alley, or other public place.

[Subsections 21-81 omitted.]

APPENDIX F

COLORADO CONSTITUTION
ARTICLE XXV

Public Utilities

In addition to the powers now vested in the General Assembly of the State of Colorado, all power to regulate the facilities, service and rates and charges therefor, including facilities and service and rates and charges therefor within home rule cities and home rule towns, of every corporation, individual, or association of individuals, wheresoever situate or operating within the State of Colorado, whether within or without a home rule city or home

rule town, as a public utility, as presently or as may hereafter be defined as a public utility by the laws of the State of Colorado, is hereby vested in such agency of the State of Colorado as the General Assembly shall by law designate.

Until such time as the General Assembly may otherwise designate, said authority shall be vested in the Public Utilities Commission of the State of Colorado; provided however, nothing herein shall affect the power of municipalities to exercise reasonable police and licensing powers, nor their power to grant franchises; and provided, further, that nothing herein shall be construed to apply to municipally owned utilities.

APPENDIX G

C. R. S. 1973, § 43-2-124 and § 43-2-135

43-2-124. *City streets defined - maintenance.* (1) The city street system shall consist of all streets open and used, which shall include the primary system of major streets to be designated arterial streets, and a secondary system to be designated local service streets.

(2) Arterial streets are those streets carrying general traffic within the city and providing communication with surrounding territory and which are not part of the federal-aid and state highway connecting links within the city.

(3) Local service streets are all streets within a city open to public travel and which are not a part of the

federal-aid connecting links, state highways, or streets designated as arterial streets.

(4) The city streets system, both arterial and local service streets, shall be constructed and maintained by the respective city, city and county, or incorporated town.

43-2-135. *Division of authority over streets.* (1) The jurisdiction, control, and duty of the state, cities and counties, and incorporated towns with respect to streets which are a part of the state highway system is as follows:

(a) The city, city and county, and incorporated town shall exercise full responsibility for and control over any such street beyond and including the curbs and, if no curb is installed, beyond the traveled way, its contiguous shoulders, and appurtenances; except that the regulation and control of driveways shall be subject to the provisions of section 43-2-147.

(b) The state department of highways has authority to prohibit the suspension of signs, banners, or decorations above the portion of such streets between the curbs or portion used for highway purposes up to a vertical height of twenty feet above the surface of the roadway.

(c) The city, city and county, or incorporated town at its own expense shall maintain all underground facilities in such streets and has the right to construct such underground facilities as may be necessary in such streets.

(d) The city, city and county, or incorporated town has the right to grant the privilege to open the surface of any such street, but all damages occasioned thereby shall promptly be repaired either by the city, city and county, or incorporated town itself or at its direction.

(e) The city, city and county, or incorporated town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins.

(f) The state department of highways has the right to utilize all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of streets by the state department of highways, the cost of such facilities shall be borne by the state and municipality as may be mutually agreed upon between the state department of highways and the local governing body of the city, city and county, or incorporated town.

(g) Cities, cities and counties, and incorporated towns shall regulate and enforce all traffic and parking restrictions on streets which are state highways, but all regulations adopted after December 31, 1979, shall be approved in writing by the state department of highways before becoming effective on such streets; except that such regulations shall become effective on such streets sixty days after receipt for review by the state department of highways if not disapproved in writing by said department during that sixty-day period.

(h) The state department of highways shall erect, control, and maintain at state expense all route markers and directional signs, except street signs on those streets.

(i) The state department of highways shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices on state highways in cities, the city and county of Denver, and incorporated towns. No local authority shall erect or maintain any stop sign or traffic control signal at any location so as to require the traffic on any state highway

to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state department of highways. For the purpose of this paragraph (i), striping, lane-marking, and channelization are considered traffic control devices.

(j) Rights-of-way for such street shall be acquired by either the city, city and county, or incorporated town or by the state as is mutually agreed upon. Costs of acquiring such rights-of-way may be at the sole expense of the state or the city, city and county, or incorporated town, or both, as may be mutually agreed. Title to all rights-of-way so acquired shall vest in the city, city and county, or incorporated town, or the state, according to the agreement under which said rights-of-way were secured.

(k) The state department of highways is authorized to acquire rights-of-way by purchase, gift, or condemnation for any such streets, highways, and bridges. Any such condemnation proceeding shall be exercised in the manner provided by law for condemnation proceedings to acquire lands required for state highways. Nothing in this section shall be construed as abrogating the rights of home rule cities to acquire lands for state purposes in the manner set forth in the charter of said cities.